

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

&

THE HONOURABLE MRS. JUSTICE K.HEMA

FRIDAY, THE 14TH SEPTEMBER 2007 / 23RD BHADRA 1929

MFA.No. 1391 of 2002(C)

OPMV.65/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM
.....

APPELLANT: PETITIONER

O.V.BABY S/O. VARKEY, AGED 50 YEARS,
OLANGATTU HOUSE, PERINGALA P.O.,
KUNATHUNADU VILLAGE, KUNNATHUNADU TALUK.

BY ADV. SRI.SAJEEV KUMAR K.GOPAL
SRI.M.M.ALIAS

RESPONDENTS: RESPONDENTS

-
1. E.V.GEORGE, EDAPPATTU HOUSE,
KADUNGAMANGALAM, THIRUVIENGAMKULAM
 2. E.G.STANLEY GEORGE S/O.GEORGE,
EDAPPATTU HOUSE, KADUNGAMANGALAM, THIRUVAMKULAM
 3. THE ORIENTAL INSURANCE CO. LTD.,
BRANCH OFFICE, TRIPUNITHURA

BY ADV. SRI.M.JACOB MURICKAN

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 14/09/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

J.B.KOSHY & K.HEMA,JJ.

M.F.A.NO.1391 OF 2002

Dated this the 14th day of September, 2007

JUDGMENT

Koshy, J.

The appellant while travelling in a motor cycle, met with a motor accident, by which he suffered serious injuries. He claimed compensation of Rs.11,00,000/-. The Tribunal has awarded only Rs.2,95,250/- with interest. The quantum of compensation is mainly disputed in the appeal, as negligence of the driver of the offending vehicle, coverage of insurance policy of the vehicle etc. are admitted. The main contention raised by the petitioner was that it was certified by the doctor that the permanent disability is 55%. It is also stated that he was employed in the CISF and because of the accident, he was unable to continue his job and he had to take voluntary retirement. It is further submitted that as a result of the accident, there is a 5 cm shortening of his left leg. We find no reason why the Tribunal found 20% disability. If the Tribunal was not satisfied with the medical certificate, the Tribunal ought to have referred the petitioner before a Medical Board. That was not done by the Tribunal. He has to continue with the disability for life long. It is

also submitted that the medical bills were not reimbursed. It is further submitted that still he is under treatment. According to him, more than Rs.3,00,000/- were spent after the award was passed also. It is now well settled that compensation can be awarded not only for the injuries sustained and for the treatment immediately prior to the filing of the application, but also for the future treatment. In this connection we refer to the decision of the Apex Court in **Nagappa v.Gurudayal Singh** (AIR 2002 SCW 5348). We are of the view that these two aspects were not considered properly by the Tribunal.

2. In the above circumstances, we remand the matter to the Tribunal for redetermining the compensation payable. The petitioner should be sent before a Medical Board for examination and the petitioner's disability should be reassessed. The compensation also should be determined considering the entire past and future treatment expenses and a fresh award should be passed. Both side are also allowed to adduce further oral and documentary evidence.

The appeal is allowed by way of remand. LCR and documents produced before this Court along with I.A.Nos.1685 and 315 of 2007

shall be forwarded to the Tribunal at the earliest. The party may appear before the Tribunal on 19.11.2007.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

vgs.

J.B.KOSHY & K.HEMA, J.

M.F.A.NO.1391 OF 2002

JUDGMENT

14.9.2007